654.

SUPREME COURT OF THE UNITED STATES.

No. 111.

LYMAN A. SPALDING, PLAINTIFF IN ERROR,

vs.

THE PEOPLE OF THE STATE OF NEW YORK, EX REL. FREDERIC F. BACKUS.

IN ERROR TO THE COURT FOR THE TRIAL OF IMPEACHMENTS AND FOR THE CORRECTION OF ERRORS.

INDEX.

	Original.	Print.
Writ of error	1	2
Citation and affidavit of service	2	3
Petition of appeal from decree of chancellor	5	4
Decree of chancellor affirming decree of vice chancellor	8	5
Decree of court of errors	9	5
Case prepared by respondent	10	6
Opinion of the chancellor	37	28
Certificate of clerk of court of errors	41	30
Assignment of errors	42	30

J. & G.S GIDEON, printers.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America, to the president of the senate, chancellor and judges of the supreme court, for the trial of impeachments and the correction of errors of the State of New York, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said court, for the trial of impeachments and correction of errors before you, between Lyman A. Spalding and the People of the State of New York, on the relation of Frederick F. Backus, a manifest error hath happened, to the great damage of the said Lyman A. Spalding, as by his complaint appears.

And it being fit that the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the second Monday of January next, in the said Supreme Court to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and custom of the United States, should be done.

Witness the honorable Roger B. Taney, chief justice of the said Supreme Court, this ninth day of January, in the year of our Lord one thousand eight hundred and forty-three, and of the independence of the United States the sixty-seventh.

ANSON LITTLE,
Clerk of the U. S. circuit court,
north'n dist. New York.

The within writ of error is this day allowed by me.

D. S. DICKINSON,
President of Senate, &c.

Albany, Jany. 8, 1844.

H. K. HOPKINS,
(of Lockport, Niagara co., N. Y.)
Att'y. for Plaintiff in error.

The answer of the president of the senate, senators, chancellor and justices of the Supreme Court within named, to the within writ, appears by the schedule hereto annexed, contained in a transcript of the record whereof mention is within made, which we certify under the [SEAL.] seal of our said court for the trial of impeachments and for the correction of errors, at the day and place within contained, as within we are commanded.

By the court: ISAAC R. ELWOOD, *Clerk.*

The United States of America, to Frederick F. Backus, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the second Monday of January instant, pursuant to a writ of error filed in the clerk's office of the court for the trial of impeachments and the correction of errors of the State of New York, wherein Lyman A. Spalding is plaintiff, and the People of the State of New York, on the relation of Frederick F. Backus, [are] defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Daniel S. Dickinson, lieutenant governor and president judge of the court for the trial of impeachments and the correction of errors of the State of *the State of* New York, at the Capitol, in the city of Albany, in the State aforesaid, this 8th day of January, in the year of our Lord eighteen hundred and forty-four.

D. S. DICKINSON.

H. K. HOPKINS,
(Lockport, Niagara co., N. Y.)
Attorney for plaintiff in error.

UNITED STATES OF AMERICA,
State of New York, sct:

CITY AND COUNTY OF ALBANY.

Henry K. Hopkins, of Lockport, in the county of Niagara, in the northern district of New York, being duly sworn, says, that he is the attorney for the plaintiffs in error, named in the within citation or notice, and that he, this deponent, did, on this 8th day of January, A. D. 1844, at the city and county of Albany, in said State of New York, personally serve on Frederick F. Backus, defendant in error in said within citation or notice named, a true copy of said within citation or notice, by delivering such copy to said Backus, and then and there exhibiting to said Backus said original within citation or notice. And further this deponent saith not.

H. K. HOPKINS.

Sworn before me, at the city of Albany aforesaid, this 8th day of January, 1844.

PETER GANSEVOORT,
First judge of Albany county courts, and counsellor of the Supreme Court.

STATE OF NEW YORK, *ss:*

Pleas in the court for the trial of impeachments and the correction of errors, held at the Capitol, in the city of Albany, on the 28th day of December, in the year of our Lord one thousand eight hundred and forty three, before the president of the senate, senators, and
[L. S.] the justices of the supreme court of judicature of the People of the State of New York.

Witness, Daniel S. Dickinson, esquire, our president of our Senate.
ISAAC R. ELWOOD, *Clerk.*

LYMAN A. SPALDING, appellant,
vs.
THE PEOPLE, ex rel. Frederick F. Backus.

Be it remembered, that on the 23d day of June, in the year of our Lord one thousand eight hundred and forty-three, the appellant in this cause came here into the court for the trial of impeachments and the correction of errors, by John L. Curtenius, his solicitor, and J. C. Colton of counsel, and filed in the said court his petition of appeal, from a decree of the court of chancery, in the words following, to wit:

To the court for the correction of errors.

The petition of appeal of the above named Lyman A. Spalding respectfully shows, that an order was lately made and entered in the court of chancery of the State of New York, by the chancellor, bearing date the second day of June, one thousand eight hundred and forty-three, in a certain cause pending in said court, between the People, ex rel. Frederick F. Backus, against Lyman A. Spalding, defendant, in and by which said order, it is ordered that the decree or order appealed from in this cause, made by the vice chancellor of the eighth circuit, be and the same is hereby affirmed, with costs. And further, that the proceedings be remitted to said vice chancellor for carrying into effect the said order or decree; which said order of the chancellor is, as this appellant is advised, erroneous, and ought to be reversed.

Wherefore, the appellant respectfully prays that the said order of the chancellor may be sent to the court for the correction of errors, and filed with the clerk thereof without delay; and that the said order above stated and set forth may be reversed, and that such other order may be made by the court for the correction of errors, as shall be agreeable to equity and good conscience; and this appellant may be restored to all things which he has lost by said order; and this appellant, as in duty bound, will ever pray, &c.

At a court of chancery held for the State of New York, at the city of Albany, on the nineteenth day of April, one thousand eight hundred and forty-three.

Present, Reuben H. Walworth, chancellor.

THE PEOPLE, ex rel. Frederick F. Backus, M. F. Delano.
vs.
LYMAN A. SPALDING. J. L. Curtenius.

Submitted on appeal from order of Vice Ch. 8th circuit.

Papers submitted—order of V. Ch. 8th circuit, of 18th Jan'y, 1843; not. of hearing appeal; admn. and stipul'n to submit; clerk's min. of papers read; pet'n of Fred. F. Backus; schedules A B and C D an-

nexed to petitions; copy order of 18th Nov., 1842; aff't of Lyman A. Spalding, and schedule A annexed; also the points thereto annexed; copy opinion of Vice Ch.; bill and points on appeal.

Copy. JOHN M. DAVISON, *Register.*

At a court of chancery, held for the State of New York, at the city of Albany, on the second day of June, one thousand eight hundred and forty-three.

Present, Reuben H. Walworth, chancellor.

THE PEOPLE, ex rel. Frederick F. Backus,
vs.
LYMAN A. SPALDING.

This cause having been brought to a hearing on the appeal from the vice chancellor of the eighth circuit, and after hearing Mr. Gardiner for the relator, and Mr. Curtenius for the defendant, and the chancellor having duly considered the same, it is ordered that the decree or order appealed from in this cause, made by the said vice chancellor, be and the same is hereby affirmed, with costs; and further, that the proceedings be remitted to the said vice chancellor for carrying into effect the said order or decree.

Copy. JOHN M. DAVISON, *Register.*

To which said petition of appeal the said respondents in this cause, afterwards, to wit, on the sixth day of July, in the year one thousand eight hundred and forty-three, before the said court for the correction of errors, by M. F. Delano, solicitor, and A. Gardner of counsel, filed their answer in the words following, to wit: these respondents, not confessing or acknowledging all or any of the matters and things to be true, as in and by the said petition of appeal are contained and set forth, for answer thereunto says, that they believe it to be true and admit, that on or about the second day of June, in the year 1843, the order or decree complained of by the appellant was made by the court of chancery, before the chancellor, as in the said petition of appeal is set forth, but for greater certainty as to the date and contents thereof, these respondents crave leave to refer thereto when the same shall be produced. And the said respondents are advised and believe that the said decree or order, made in this cause by the chancellor, and appealed from by the appellant, is not erroneous and ought not to be reversed, but is agreeable to equity and justice; and therefore prays that the same may be affirmed, and that the petition of appeal may be dismissed this court, with costs, to be adjudged to the respondents.

Whereupon, the said court for the correction of errors, after having heard this cause argued by the counsel for the respective parties, and diligently examined and understood the same, did order, adjudge, and decree, that the order or decree of his honor the chancellor, appealed from in this cause, be affirmed. And it was further ordered, adjudged, and decreed, that the respondents recover against the appellant their costs in

this court, to be taxed, and interest on the amount decreed to be paid, by the chancellor, by way of damages for the delay and vexation caused by this appeal.

It was also ordered that the record and proceedings be remitted to the chancellor, there to be proceeded upon according to law.

Therefore, it is considered, that the decree of the chancellor aforesaid be affirmed. And hereupon, the record and proceedings, as also the decree of this court, are remitted to the court of chancery, there to be proceeded upon according to law.

ISAAC R. ELWOOD, *Clerk.*

In the court for the correction of errors.

LYMAN A. SPALDING, appellant,
vs.
THE PEOPLE, ex rel. Frederick F. Backus, respondent.

Case prepared by the respondent.

J. L. CURTENIUS,
Solicitor for Appellant.
M. F. DELANO,
Solicitor for Respondent.

In the court for the correction of errors.

THE PEOPLE, ex rel. Frederick F. Backus,
vs.
LYMAN A. SPALDING.

Case prepared by the respondents under the 14th rule of this court.

The petition and papers annexed in this cause were filed before the vice chancellor of the eighth circuit, on the 18th day of November, 1842, and are in the following words, viz:

In chancery—Before the vice chancellor of the eighth circuit.

To the chancellor of the State of New York:

The petition of Frederick F. Backus respectfully represents: that on or about the 21st day of March, 1842, a decree was made in this court, by the vicec hancellor of the eighth circuit, in the case of the People, on the relation of Frederick F. Backus, against Lyman A. Spalding, of which the paper hereunto annexed, and marked A, is a true copy; that the same was duly entered at the clerk's office in chancery for the eighth circuit, and to which entry and order your petitioner would refer for greater certainty. And your petitioner further shows unto your honor, that on or about the 22d day of March, in the year aforesaid, a mittimus was duly issued under the seal of the court of chancery aforesaid, and founded upon the decree, and directed to the sheriff of Niagara county, a copy of which said mittimus is hereunto annexed, and marked B. And your petitioner further shows unto your honor, that on or about the 14th day of

April, in the year last aforesaid, the said sheriff returned said mittimus to said clerk's office, with his return endorsed thereon, in substance, that the said sheriff had arrested the said Spalding upon the said mittimus, and that he had been discharged from said arrest by Nathan Dayton, esq., circuit judge, while holding the circuit court in and for the county of Niagara, upon the ground that the said Spalding was attending the said circuit court as a witness in two causes in the supreme court, and to be tried at said circuit; and that the said circuit judge then and there further ordered, that the said Spalding should not be again arrested by virtue of the said mittimus while he should be in attendance at said court as such witness, and until he should return from such attendance; and since said Spalding was so discharged, and after he had returned home from his attendance as such witness, he could not be found in said county of Niagara, as will more fully appear by the said mittimus and return on file in said clerk's office, and to which your petitioners would beg leave to refer.

And your petitioner further shows unto your honor, that on or about the 4th day of May, and after the return of said mittimus as aforesaid, a decretal order was made by the said vice chancellor, directing an alias mittimus to be issued against the said Lyman A. Spalding, which order referred to, and was founded upon, the decree, a copy of which is hereto annexed and marked A; that the last mentioned order or a copy thereof is hereto annexed and marked C; and to said original order, duly entered by the clerk aforesaid in his office, your petitioner would refer for greater certainty.

And your petitioner further shows unto your honor, that afterwards, and on or about the sixth day of May, in the year aforesaid, in pursuance of the order aforesaid, an alias mittimus was duly issued, under the seal of said court of chancery, against the said Spalding, a copy of which is hereunto annexed and marked "D," and to which, and the original, your petitioner prays leave to refer for greater certainty.

And your petitioner further shows unto your honor, that, as he is informed and believes, the said sheriff of Niagara county afterwards, and on or about the 7th day of May, 1842, by virtue of the writ last aforesaid, arrested the said Lyman A. Spalding; and that the latter, upon the day of his arrest, sued out a writ of habeas corpus, returnable before Elias Ransom, esq.; that a hearing was had before the said Ransom, prior to the 19th day of May, 1842; on the 19th day of May the said Spalding was remanded by said Ransom to the custody of the sheriff; that upon the said day the said Spalding sued out another writ of habeas corpus, returnable before Joseph Center, esq., another commissioner, residing in the said county of Niagara; that the hearing was had before the said commissioner, upon the 27th day of May, 1842, and the said Spalding again remanded to the custody of said sheriff.

And that upon the day last aforesaid, the said Spalding sued out another writ of habeas corpus, returnable before hon. Nathan Dayton; that a hearing was had before the said judge, on or about the 4th day of June, 1842; that upon the hearing last aforesaid, the said Spalding was re-

manded to the custody of the said sheriff; that said officers all resided in the county of Niagara, and that application to each for the discharge of said Spalding was substantially upon the same ground.

And your petitioner further shows, that shortly after the hearing last aforesaid, and within one or two days thereafter, as your petitioner is informed and believes, the said Spalding procured one Nichols, an assignee in bankruptcy, to obtain a writ of habeas corpus from Judge Conkling of the United States district court, for the northern district of this State, directed to said sheriff of said county, requiring him to bring the said Spalding before the assignee from time to time as he required, for the purpose in said writ mentioned more particularly; that by color of the said writ of habeas corpus last aforesaid, the said Spalding was at large, as your petitioner is informed and believes, until the first day of July, 1842, when the said Spalding sued out another writ of habeas corpus, returnable before the said Center; that after hearing, and before the said Center had decided thereon, the said Spalding was again taken before the said Nichols, by virtue of the said writ issued out of the said district court as aforesaid.

And your petitioner further shows, that by color of the said several writs of habeas corpus, the said Spalding has been at large out of the jail of the said county of Niagara, as your orator is informed and believes, since the time of his arrest upon the mittimus last aforesaid, to the time of his discharge by Joseph Center, esq., as hereinafter mentioned, with the exception of a very few days, not exceeding one week in all.

And your petitioner further shows, that on or about the 19th day of September, 1842, the said Spalding sued out another writ of habeas corpus, returnable before the said Joseph Center, esq.; that afterwards, and on the 29th day of September, 1842, a hearing was had before the said Center.

That as your orator is informed and believes, the said sheriff returned to said writ of habeas corpus that the said Spalding was in his custody by virtue of the said mittimus last aforesaid, a copy of which was annexed to said writ.

That as your petitioner is informed and believes, the said Spalding produced before the said Center a discharge of him the said Lyman A. Spalding, under the Bankrupt act of the United States, granted by the district court of the United States for the northern district of the State of New York, dated September 17, 1842, under the seal of that court.

And your petitioner further states, that upon said hearing before the said Center, the counsel for your petitioner took the following objections in substance, as your petitioner is informed and believes. That the said commissioner had no authority to discharge said Spalding—

First. Because the return of the sheriff showed the said Spalding in custody, by virtue of a mittimus out of the court of chancery, for a wilful contempt of said court, which was plainly and specially stated in said mittimus.

Second. Because the bankrupt discharge did not extend to this case; and if it did, that the application for his discharge from imprisonment

must be made by Spalding to the court of chancery, and not to a commissioner.

Third. Because no notice had been given by Spalding to the relator of the application for a discharge under the bankrupt act; and fourth, because the said Spalding had not conformed to the provisions of the bankrupt law, to wit, that his discharge had been obtained by fraud.

And upon the two last points the said counsel demanded an issue to enable him to substantiate the same by proof.

But the said commissioner overruled all said objections, and denied said issue, so tendered as aforesaid, or the means of providing the facts stated in the two last objections, and then and there discharged said Spalding from the custody of said sheriff, by a writing endorsed upon the back of said mittimus, a copy of which is hereto annexed, as appears upon the back of the copy of said mittimus attached to this petition.

That said mittimus was, upon the 13th day of October, 1842, returned by said sheriff, with said discharge endorsed thereon; and that said sheriff returned, in substance, that he had discharged said Spalding from custody, in pursuance of said order of said Center, so appearing on said writ or mittimus, as aforesaid.

To which mittimus, the return of the sheriff, and the order of said Center, your petitioner would refer for greater certainty, the same being now on file in the clerk's office for the eighth circuit of this court.

And your petitioner further shows, that the said Spalding has been, since said order of said commissioner, and is now, at large.

And your petitioner further shows, that said discharge was wholly unauthorized; and, as he is advised, the procurement thereof is a contempt of this court by the said Spalding. And your petitioner therefore prays for an order that another mittimus issue to the sheriff of the county of Niagara, or of the county of Monroe, against the said Spalding, for the contempt aforesaid; or for such other order or relief as your petitioner may be entitled to in the premises, as may be in conformity to the case presented by this petition.

Dated Nov. 18, 1842.

FREDERICK F. BACKUS.

M. F. DELANO, *Sol.*
A. GARDINER, *of Counsel.*

Monroe county, ss.

On this 18th day of November, 1842, before me came Frederick F. Backus, who, being by me duly sworn, deposeth and saith, that he has read the foregoing petition, and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated to be on his information and belief; and as to those matters he believes it to be true.

T. B. HAMILTON, *Master in chancery.*

(Schedule A.)

At a court of chancery, held for the State of New York, at the city of Rochester, on the 21st day of March, one thousand eight hundred and forty-two.

Present, Frederick Whittlesey, vice chancellor of the 8th circuit.

THE PEOPLE, ex rel. Frederick F. Backus,
vs.
LYMAN A. SPALDING.

Whereas, on the 20th day of July, 1840, an injunction was issued out of this court, and served upon Lyman A. Spalding, in a certain cause in this court, wherein Frederick F. Backus was complainant, and Lyman A. Spalding and Charles S. Mack, defendants, to restrain the said Lyman A. Spalding, amongst other things, under the penalty of twenty thousand dollars, from collecting, receiving, transferring selling, assigning, delivering, or in any way or manner using, controlling, interfering, or meddling with, or disposing of any debts or demands due to him, or any goods, wares, merchandise, account-books, bills, drafts, checks, promissory notes, bonds, mortgages, judgments, or other securities, things in action, property or effects, whether in his own name or hands, or in the name or hands of, or held by, any other person or persons, for his use or benefit, or in trust for him, express or implied. And whereas, on the 13th day of December, 1841, an order was duly made by this court and entered, that an attachment should issue against the said Lyman A. Spalding for the violation of the said injunction, and in pursuance of the said order an attachment was issued in the said cause against the said Lyman A. Spalding, directed to the sheriff of the county of Niagara, and returnable on the 4th Tuesday of December, 1841, before the vice chancellor of the eighth circuit, upon which the said Spalding was arrested and brought before the said vice chancellor on the day last aforesaid, and such proceedings were thereupon had, that interrogatories in due form of law were exhibited, and answers thereto filed and put in by the said Spalding. And whereas, by a further order of the said court, before the said vice chancellor, made on the fifteenth day of January, 1842, the matters aforesaid were referred to John C. Nash, one of the masters of this court, residing in the city of Rochester; and whereas, the said master has made his report thereon, and returned the same, together with the depositions, and schedules, and exhibits, taken and made under and by virtue of the said last mentioned order.

Thereupon, on reading the original depositions and other papers, on which the order for the said attachment was founded, the said interrogatories and the answer of the said Spalding thereto, and the report of the said master, and the depositions, schedules, and exhibits accompanying the same; and on hearing A. Gardiner, esq., counsel for the complainant, and Mr. Bowen, of counsel for the defendant, the court doth declare and adjudge that the said Lyman A. Spalding has been and is guilty of a contempt of this court, in wilfully violating the said injunction, and

by disposing of property and receiving and paying out money contrary to the terms of the said injunction; and that said misconduct of the said Lyman A. Spalding was calculated to, and actually did impair, impede and prejudice the rights and remedies of the complainant in the said cause.

It is therefore ordered, that the said Lyman A. Spalding pay a fine for the said contempt of which he is adjudged guilty, to the amount of three thousand dollars, and that he also pay the costs and expenses of the proceedings in relation to the said contempt, which have been taxed at one hundred and ninety-six dollars and fifty-one cents, and that the said Lyman A. Spalding be committed to the common gaol of the county of Niagara until the said sum of three thousand dollars, and the costs and expenses, are paid by him as aforesaid; and that a mittimus issue accordingly, directed to the sheriff of the county of Niagara.

And it is further ordered, that the said costs and expenses be paid to the solicitor of the said complainant, and that the said sum of three thousand dollars be paid to the clerk of this court for the 8th circuit, to be retained by him, subject to the further order of the court.

(Schedule B.)

[L. S.] The people of the State of New York to the sheriff of the county of Niagara, greeting:

Whereas, on the 20th day of July, 1840, an injunction was issued out of and by order of the court of chancery, before the vice chancellor of the eighth circuit, at the city of Rochester, in the county of Monroe, and served upon Lyman A. Spalding, in a certain cause in the said court wherein Frederick F. Backus was complainant, and Lyman A. Spalding and Charles S. Mack, defendants, to restrain the said Lyman A. Spalding, amongst other things, under the penalty of twenty thousand dollars, from collecting, receiving, transferring, selling, assigning, delivering, or in any way or manner using, controlling, interfering with, or meddling with, or disposing of, any debts or demands due to him, or any goods, wares, merchandises, account-books, bills, drafts, checks, promissory notes, bonds, mortgages, judgments, or other securities, things in action, property or effects, whether in his name or hands, or in the name or hands of, or held by, any other person or persons, for his use and benefit, or in trust for him, express or implied. And whereas, on the 13th day of December, 1841, an order was duly made by the said court, before the said vice chancellor, and entered, that an attachment should issue against the said Lyman A. Spalding for the violation of the said injunction; and in pursuance of the said order an attachment was issued against the said Lyman A. Spalding, directed to the sheriff of the county of Niagara, and returnable on the 4th Tuesday of December, 1841, before the said vice chancellor of the eighth circuit, upon which the said Lyman A. Spalding was arrested, and brought before the said vice chancellor on the day last aforesaid, and such proceedings were thereupon had that interrogatories, in due form of law, were duly exhibited, and answers thereto filed and put in, by the said Lyman A. Spalding

and whereas, by a further order of the said court, before the said vice chancellor, made on the 15th day of January, 1842, the matters aforesaid were referred to John C. Nash, one of the masters of this court, residing in the city of Rochester, and the said master made his report thereon, and returned the same, together with the depositions, schedules and exhibits, taken and made under and by virtue of the said last mentioned order.

And whereas, on the 21st day of March, 1842, by a certain other order made in our said court of chancery, before our said vice chancellor, at the city of Rochester aforesaid, after reciting the orders and proceedings above mentioned, it was declared and adjudged that the said Lyman A. Spalding had been and was guilty of a contempt of our said court of chancery, in wilfully violating the said injunction by disposing of property, and receiving and paying out money, contrary to the terms of said injunction; and that such misconduct of the said Lyman A. Spalding was calculated to, and actually did, impair, impede, and prejudice the rights and remedies of the complainants in such cause; and it was thereupon ordered, that the said Lyman A. Spalding pay a fine, for the said contempt of which he was adjudged guilty, to the amount of three thousand dollars; and that he also pay the costs and the expenses of the proceedings in relation to the said contempt, which had been taxed at one hundred and ninety-six dollars and fifty-one cents; and that the said Lyman A. Spalding be committed to the common jail of the county of Niagara until the said sum of three thousand dollars, and the said costs and expenses, are paid by him as aforesaid, and that a mittimus issue accordingly, directed to the sheriff of the county of Niagara.

Now, therefore, in order that full and speedy justice may be done in the premises, we command you that you take the body of the said Lyman A. Spalding, and him closely and safely keep in your custody in the common jail of the county of Niagara, until he shall pay the said sum of three thousand dollars for the said contempt, and shall pay the costs and expenses aforesaid, with your fees on this writ, or until our said court of chancery shall make other order to the contrary. And you are to make and return to our said vice chancellor of the eighth circuit in our said court of chancery, on the second Tuesday of April next, wheresoever the said court shall then be, a certificate under your hand, of your doings in the premises, together with the writ.

Witness Reuben H. Walworth, esq., chancellor of our said State, at the city of Rochester, in the county of Monroe, the twenty-second day of March, 1842.

SAM. L. SELDEN, *Clerk.*

M. F. DELANO, *Solicitor.*

STATE OF NEW YORK, *Niagara county, ss:*

I hereby certify, that by virtue of the within mittimus, I did, on the 28th day of March last, arrest and take into my custody the within named Lyman A. Spalding; that when said arrest was made, the circuit court, in and for the county of Niagara, held by and before N. Dayton,

circuit judge, was in session, and said arrest was made while said court was in session; that said circuit judge thereupon, and while holding said court, ordered said Spalding to be discharged from said arrest, on the ground that he, said Spalding was attending said court as a witness in two causes pending in the supreme court, and to be tried at said circuit court; and said circuit judge then and there further ordered that said Spalding should not be again arrested by virtue of the within writ while he, said Spalding, should be in attendance at said court as such witness, and until he should return home from such attendance; and since said Spalding was so discharged, and after he had returned home from his attendance as such witness, he has not been found in my county.

T. STONE, *Sheriff.*

(Schedule C.)

At a court of chancery, held for the State of New York, at the city of Rochester, on the 4th day of May, one thousand eight hundred and forty-two.

Present, Frederick Whittlesey, vice chancellor of the 8th circuit.

THE PEOPLE, ex rel. Frederick F. Backus.
vs.
LYMAN A. SPALDING.

The Sheriff of the county of Niagara having returned the mittimus issued in this cause against the defendant, Lyman A. Spalding, in pursuance of an order of this court, dated the 2s1t day of March last, he arrested the said Spalding, and took him into his custody; and that when said arrest was made the circuit court in and for the county of Niagara, held by and before N. Dayton, circuit judge, was in session, and said arrest was made while said court was in session; and said circuit judge thereupon, and while holding said circuit court, ordered said Spalding to be discharged from said arrest, on the ground that he, said Spalding, was attending at said court as witness in two causes pending in the supreme court to be tried at said circuit court; and said circuit judge then and there further ordered, that said Spalding should not be again arrested by virtue of said mittimus, while he, said Spalding, should be in attendance at said court as such witness, until he should return home from such attendance; and since said Spalding was so discharged, and after he had returned home from the attendance as such witness, he had not been found in the county of the said sheriff. On motion of A. Gardiner, of counsel for the relator, it is ordered, that another mittimus issue in the manner directed by the said order, against the said Lyman A. Spalding, directed to the sheriff of the county of Niagara, returnable on the second Tuesday of May instant, before the vice chancellor of the eighth circuit, in the court of chancery, wherever the said court shall then be, and that said mittimus be issued without prejudice to any proceedings, by attachment or otherwise, against the said sheriff.

(Shedule D.)

[L. S.] The people of the State of New York, to the sheriff of the county of Niagara, greeting:

Whereas, on the 20th day of July, 1840, an injunction was issued out of, and by the order of, our court of chancery, before the vice chancellor of the eighth circuit, at the city of Rochester, in the county of Monroe, and served upon Lyman A. Spalding, in a certain cause in the said courts, wherein Frederick F. Backus was complainant, and Lyman A. Spalding and Charles S. Mack were defendants, to restrain the said Lyman A. Spalding, amongst other things, under the penalty of twenty thousand dollars, from collecting, receiving, transferring, selling, assigning, delivering, or in any way or manner using, controlling, interfering or meddling with, or disposing of, any debts or demands due to him, or any goods, wares, merchandises, account-books, bills, drafts, checks, promissory notes, bonds, mortgages, judgments, or other securities, things in action, property or effects, whether in his own name or hands, or in the name or hands of, or held by, any other person or persons, for his use or benefit, or in trust for him, express or implied; and whereas, on the 13th day of December, 1841, an order was duly made by the said court, before the said vice chancellor, and entered, that an attachment should issue against the said Lyman A. Spalding, for violation of the injunction; in pursuance of the said order an attachment was issued against the said Lyman A. Spalding, directed to the sheriff of the county of Niagara, and returnable on the 4th Tuesday of December, 1841, before the said vice chancellor of the eight circuit, upon which the said Lyman A. Spalding was arrested and brought before the said vice chancellor on the day last aforesaid; and such proceedings were thereupon had, that interrogatories in due form of law were exhibited, and answers thereto filed and put in by the said Lyman A. Spalding; and whereas, by a further order of the court before the said vice chancellor, made on the 15th day of January, 1842, the matters aforesaid were referred to John C. Nash, esq., one of the masters of this court, residing in the city of Rochester; and the said master made his report thereon, and returned the same, together with the depositions, and schedules, and exhibits, taken and made under and by virtue of the said last mentioned order.

And whereas, on the 21st day of March, 1842, by a certain other order made in our said court of chancery, before our said vice chancellor, at the city of Rochester aforesaid, after reciting the orders and proceedings above mentioned, it was declared and adjudged that the said Lyman A. Spalding had been and was guilty of a contempt of our said court, in wilfully violating the said injunction, by disposing of his property, and receiving and paying out money contrary to the terms of the said injunction; and that such misconduct of the said Lyman A. Spalding was calculated to, and actually did, impair, impede, and prejudice the rights and remedies of the complainant in such cause; and it was thereupon ordered, that the said Lyman A. Spalding pay a fine for the said contempt, of which he was adjudged guilty, to the amount of three thousand

dollars, and that he also pay the costs and expenses of these proceedings in relation to the said contempt, which have been taxed at one hundred and ninety-six dollars and fifty-one cents; and that the said Lyman A. Spalding be committed to the common gaol of the county of Niagara, until the said sum of three thousand dollars, and the said costs and expenses, are paid by him as aforesaid, and that a mittimus issue accordingly, directed to the sheriff of the county of Niagara.

Now, therefore, that full and speedy justice may be done in the premises, we command you, as you have before been commanded, that you take the body of the said Lyman A. Spalding, and commit him to the common gaol of the county of Niagara, and him closely and safely keep in your custody, in the said common gaol, until he shall pay the said sum of three thousand dollars for the said contempt, and shall pay the costs and expenses aforesaid, with your fees on this writ, or until our said court of chancery shall make other order to the contrary; and you are to make and return to our said vice chancellor, of the eighth circuit, in our said court of chancery, on the second Tuesday of May instant, wheresoever the said court shall then be, a certificate, under your hands, of your doings in the premises, together with this writ.

Witness Reuben H. Walworth, esq., chancellor of our said State, at the city of Rochester, in the county of Monroe, the fifth day of May, 1842.

E. DARWIN SMITH, *Clerk.*

M. F. DELANO, *Solicitor.*

To the sheriff of the county of Niagara.

Whereas, Lyman A. Spalding, within named, having been brought before me on a writ of habeas corpus, and on this day I having heard the proofs and allegations of the parties, and it appearing that the said Lyman A. Spalding is detained and committed under and by virtue of the within mittimus, and I have determined and adjudged that such detention is illegal, and that said Spalding is entitled to his discharge therefrom; these are to command you, said sheriff, forthwith to discharge and liberate said Lyman from all imprisonment and detention under said mittimus.

JOSEPH CENTER,
Sup. Court Com.

September 29, 1842.

Upon presenting the foregoing petition and schedules to the vice chancellor, the following order was made:

At a court of chancery held for the State of New York, at Rochester, in the county of Monroe, on the 18th day of November, 1842.

Present, Frederick Whittlesey, vice-chancellor of the 8th circuit.

THE PEOPLE, ex rel. Frederick F. Backus.
vs.
LYMAN A. SPALDING.

On reading the petition of the relator in this cause, duly verified, and

the schedules thereto annexed, and on motion of A. Gardiner, of counsel for the relator, it is ordered that the defendant, Lyman A. Spalding, show cause before me, at the court house, in the city of Rochester, on Monday, the 28th day of November instant, at ten o'clock in the forenoon, why another or a second alias mittimus should not be issued against him, agreeably to the prayer of the said petition.

And it is further ordered, that a copy of the said petition and schedules, and a copy of this order, be served personally on the said Lyman A. Spalding, at least four days before the time of hearing above mentioned.

Copy. E. DARWIN SMITH, *Clerk.*

Upon the argument of said cause, before the said vice chancellor, the defendant, by J. L. Curtenius, esq., his solicitor, presented the following affidavits, points, and schedules:

THE PEOPLE, ex rel. Frederick F. Backus, vs. LYMAN A. SPALDING. } In chancery, eighth circuit.

STATE OF NEW YORK, *Niagara county, ss:*

Lyman A. Spalding, the above named defendant, being duly affirmed, says, that on the 7th day of May, 1842, he was arrested by the sheriff of the county of Niagara on the alias mittimus issued in this cause, a copy whereof is marked D, in the copies of the papers served on him in this cause.

That on the 17th day of September, 1842, he, this defendant, was discharged from all his debts as a bankrupt, under the act entitled "an act to establish a uniform system of bankruptcy throughout the United States, passed August 19, 1841," and received a certificate of said discharge, a copy whereof is hereunto annexed, marked A.

On the 19th day of said month he made an application, in conformity to the statute in such case made and provided, for a writ of habeas corpus to Joseph Center, esq., a supreme court commissioner, residing at Lockport, in the county of Niagara, to be discharged from said alias mittimus, on the ground of his said discharge under the said act in relation to bankruptcy.

And this defendant says, that the said writ was allowed, and that he was brought before the said commissioner, and the sheriff returned that he held this defendant by virtue of the alias mittimus above mentioned; due notice having been given to the relator, on the 29th day of September aforesaid, this defendant and the said relator appeared before the said commissioner by their respective counsel. And the defendant, by his counsel, claimed to be discharged from the said alias mittimus, and the custody of the sheriff thereon, on the ground—

1st. That the fine was imposed under the statue, as for contempt to enforce civil remedies, (that is, to compel the payment of debts, &c.)

2d. That the fine imposed (as stated in the alias mittimus) was a debt; and if collected, would and must under the statue be applied to the ex-

tinguishment of so much of the relator's debt.

3d. That the discharge of this defendant from all his debts under the bankrupt act did discharge him from the original or principal debt, to reduce which the fine, if collected, must be applied, and consequently must and did discharge him from the fine. And showed to the commissioner that the said relator was a judgment creditor, who had filed a creditor's bill, and obtained the injunction, for the alleged violation of which the said fine was imposed, and that the judgment was obtained by the relator for the non-performance of promises on the part of the defendant. And, also, that the said judgment was inventoried, and the said relator named as a creditor in the schedules annexed to, and filed with, this defendant's petition in bankruptcy.

And produced the certificate of his discharge under the seal of the United States court for the northern district of the State of New York, a copy of which is hereunto annexed as aforesaid.

The relator's counsel interposed the objection (in substance as follows) to defendant's discharge:

1st. That the commissioner had no authority to discharge.

2d. Because it appeared that he, defendant, was in custody by virtue of a mittimus of the court of chancery, for a wilful contempt of said court, which was plainly and especially stated in said mittimus.

3d. That the bankrupt's discharge did not extend to this case; and if it did, the application for his discharge must be made by defendant to the court of chancery, and not to a commissioner.

4th. Because that no notice had been given by Spalding to the relator, of his application for a discharge under the bankrupt act, and that said defendant had not conformed to the provisions of the bankrupt law in this, to wit, his discharge had been obtained by fraud.

And this defendant further says, that the issue was distinctly presented to the said commissioner, whether or not this defendant was entitled to be discharged from the said alias mittimus and the fine therein, by reason of his discharge under the bankrupt law from all of his debts.

And this defendant further saith, that after hearing the allegations, proofs, and objections, the said commissioner decided that he, this defendant, was entitled to be discharged from the same, and did grant the discharge in the said petition of relator stated.

And this defendant further says to the last objections, included in the 4th above, that the relator well knew that extraordinary efforts had been made by counsel of relator, and by others, in the suggestion, and request, as this defendant believes, of relator and his counsel, to defeat his discharge under the bankrupt law. And after filing objections, and taking testimony in relation to the same, no fraud was shown on the trial of the defendant, or want of conformity to the requisitions of bankrupt law; and this defendant, after a contested hearing, was duly discharged, and received his certificate as aforesaid.

And this defendant says, that no new or other fact than those presented to, and passed upon by, the said commissioner, is alleged or pretended by relator in his said petition. L. A. SPALDING.

Subscribed and sworn before me, this 25th day of November, 1842.

WRIGHT LATTIN,
Justice of the Peace.

In chancery, eighth circuit.

THE PEOPLE, ex rel. Frederick F. Backus,
vs.
LYMAN A. SPALDING.

The defendant insists on the following points, in bar of any further proceedings in relation to said fine and the jurisdiction of this court in the matter:

1. That the facts, as stated in the affidavit and petition on which this motion is made and resisted, have been presented before and adjudicated upon (by an officer having jurisdiction in the matter) between these same parties.

2. That such adjudication is conclusive in all future controversies between these parties in relation to the same matters. *Mercien vs. The People*, 25 *Wend. Rep.* 65, *in error.*

3. The question before the commissioner was, and by him decided in the affirmative, whether the fine was a debt, and if so whether a discharge under the bankrupt act, discharging the defendant from all of his debts, did not discharge him from this, and from the mittimus to collect it. The application of relator asks the court to say that the commissioner erred—that the fine was not a debt, and was not discharged—that it still can be collected, and that a mittimus should issue to enforce its collection.

4. The matter stands *res adjudicata*, and this court has no appellate jurisdiction, and cannot question the decision of the commissioner. The remedy of the party aggrieved is by certiorari, pursuant to the statute.

5. It is not pretended that a new state of facts exists—none shown in petition. It leaves this court on the same facts, between the same parties, to adjudicate the same matter. 25 *Wend.* 65. Under the decision of *Mercien vs. The People* this court has not the power.

6. On the facts as they appear from the papers this court has no jurisdiction in the matter. If the commissioner erred, the remedy is by certiorari.

In Bankruptcy.—[A.]

District court of the United States, for the northern district of New York, Auburn, September 17, 1842.

Present, Alfred Conkling, esq., district judge.

Lyman A. Spalding, of Lockport, Niagara county, having by a decree of this court been duly declared a bankrupt on his petition heretofore, to wit, on the eleventh day of April, 1842, by him for that purpose presented, pursuant to an act of Congress entitled "An act to establish a uniform system of bankruptcy throughout the United States," passed August 19, 1841; and the said bankrupt having filed his petition, praying to be dis-

charged in full from all his debts, and for a certificate of such discharge; and it satisfactorily appearing to the court, upon the hearing of the said petition, that the said bankrupt has bona fide surrendered all his property and rights of property, with the exception of such articles of property as were designated and set apart by the assignee for the use of said bankrupt, according to the provisions of the said act; and also that the said bankrupt has fully complied with and obeyed all the orders and directions which have from time to time been passed by said court touching the matter of his said petition, and otherwise conformed to all the requisites of the said act; and that no written dissent to the discharge of the said Spalding has been filed by a majority, in number and value, of his creditors who have proved their debts; and no cause being now shown to the court, why the prayer of the petition should not be granted;

It is, therefore, in virtue of the act aforesaid, ordered, decreed, and allowed by the court, that the said Spalding be, and he accordingly hereby is, fully discharged of and from all his debts, owing by him at the time of the presentation of his said petition to be declared a bankrupt. And it is further ordered, that the clerk duly certify this decree under the seal of this court, and deliver the same to the said Spalding, when demanded, as and for his certificate of discharge, as such bankrupt.

UNITED STATES OF AMERICA,
Northern district of New York:

I, Anson Little, clerk of the district court of the United States, for the northern district of New York, do hereby certify the foregoing to [L. S.] be a true copy of a decreed of the said court, made and duly entered, on the seventeenth day of September, in the year of our Lord eighteen hundred and forty-two.

Given under my hand and the seal of the said court, at Auburn, this seventeenth day of September, in the year of our Lord one thousand eight hundred and forty-two. ANSON LITTLE, *Clerk.*

The cause was heard before the vice chancellor upon the foregoing papers, and after deliberation the following order was made:

At a court of chancery for the State of New York, holden at Rochester, in the county of Monroe, on the 18th of January, 1843,

Present, Frederick Whittlesey, vice chancellor of the 8th circuit.

THE PEOPLE, ex rel. Frederick F. Backus,
vs.
LYMAN A. SPALDING.

Whereas, on the 28th day of November, 1842, at the November term of the said court, held at the court house, in the said city of Rochester, before the said vice chancellor, the said Frederick F. Backus did present his petition in the cause aforesaid, by which, among other things, it appeared that theretofore, an injunction had issued out of and under the seal of said court, in a certain cause in said court, wherein the said Frederick F. Backus was complainant, and the said Lyman A. Spalding and

Charles S. Mack were defendants, to restrain the said Spalding, under the penalty of twenty thousand dollars, amongst other things, from collecting, transferring, selling, assigning, or disposing of any debts or demands due to him, or any property owned by him, the said Lyman A. Spalding; and whereas, it also appeared, that such proceedings were afterwards had, according to the practice of said court, that the said Lyman A. after contestation, and after hearing counsel on behalf of the said Lyman A., was duly adjudged, by said court, guilty of a contempt of said court in knowingly and wilfully violating said injunction, by disposing of property, and receiving and paying out money contrary to the terms of said injunction; and that such misconduct of the said Lyman A. was calculated to, and did, impair, impede, and prejudice the rights and remedies of the said complainant in said cause; and it was therefore ordered and adjudged, by the court aforesaid, that the said Lyman A. Spalding pay a fine for said contempt, of which he was adjudged guilty, to the amount of three thousand dollars, and that he should also pay the costs and expenses of the proceedings in relation to said contempt, which had been taxed at one hundred and ninety-six dollars and fifty-one cents; and that the said Lyman A. Spalding should be committed to the common jail of the county of Niagara, until the said sum of three thousand dollars, and the said costs and expenses, should be paid by the said Spalding as aforesaid, and that a mittimus issue accordingly, directed to the sheriff of Niagara county; and it was further ordered and directed, in and by said order, that the said costs and expenses be paid to the solicitor of the said complainant, and that the said sum of three thousand dollars should be paid to the clerk of this court for the 8th circuit, to be retained by him, subject to the further order of the said court.

And whereas, it also appeared from said petition, that on or about the 22d day of March, 1842, a mittimus, in pursuance of said order, was duly issued out of said court, directed to the sheriff of Niagara county, which was afterwards returned by said sheriff, that the said Spalding was not in his custody, for certain reasons appearing, upon the return of the said sheriff to said mittimus; and whereas, it also appeared that, afterwards, and on or about the fifth day of May, and after the return of said mittimus, an order was duly made by this court, directing another, or alias mittimus, to issue against the said Spalding to the said sheriff, which order referred to and was founded upon the original order above mentioned and referred to; and whereas, it further appeared, that afterwards, and on or about the 6th day of May, another mittimus was issued out of said court, and under the seal thereof, founded upon and in pursuance of, and reciting the substance of, the orders above mentioned, and directed the said sheriff of Niagara county, a copy of which said second mittimus was annexed to said petition; and that afterwards, to wit, on or about the 7th day of May, 1842, the sheriff of the county of Niagara, by return of said mittimus last aforesaid, arrested the said Spalding, (after various attempts upon the part of said Spalding to procure his discharge before various commissioners, as in said petition is more fully stated,) committed the said Spalding to the common jail of the said county of Niagara. That

on or about the 19th of September, 1842, the said Spalding sued out a writ of habeas corpus, returnable before one Joseph Center, esq., a commissioner of the supreme court; that afterwards, and on the 29th day of September, a hearing was had before the said Center; that the said sheriff returned to said writ that the said Spalding was in his custody by virtue of the said mittimus last aforesaid, a copy of which was annexed to said writ; that the said Spalding produced, before the said Center, a discharge of him, the said Lyman A. Spalding, under the bankrupt act of the United States, granted by the district court of the United States, for the northern district of the State of New York, dated September 17th, 1842, under the seal of that court; and whereas, it further appeared by said petition, that upon said hearing, the following objections, in substance, were duly taken to the discharge of said Spalding—that the said commissioners had no jurisdiction or authority to discharge the said Spalding.—

First. Because the return showed Spalding in custody by virtue of the mittimus aforesaid, out of this court, for a wilful contempt of said court, which was plainly and specially stated in said mittimus.

Second. That the said discharge did not extend to a case of this kind; and if it did, that the application for said discharge must be made to the court of chancery.

Third. Because no notice had been given by said Spalding, to the relator, of his application for a discharge under the bankrupt act.

Fourth. Because the said Spalding had not conformed to the provisions of the bankrupt laws, in this, that the said discharge was obtained by fraud, and that upon the last two points an issue was demanded to enable the relator to substantiate the same by proof.

And whereas, it further appeared, as aforesaid, that the said commissioner overruled all said objections, and denied the issue so tendered as aforesaid, as the means of proving the facts stated in the two last objections, and then and there discharged said Spalding from the custody of said sheriff, by a writing endorsed upon said mittimus, a copy of which was attached to said petition; and whereas, it further appeared, as aforesaid, that the said sheriff aforesaid, on the thirteenth day of October, 1842, returned the said mittimus with said discharge endorsed thereon, and stated, in substance, in his said return, that he had discharged said Spalding from custody, in pursuance of said order and discharge of the said commissioner as aforesaid, appearing upon the said writ; and it further appearing that said Spalding had been, from the time of the granting said discharge, at large and out of the custody of said sheriff; and whereas, it was claimed by said petition that the said discharge was wholly unauthorized and void, that the procurement thereof by the said defendant, as aforesaid, was a contempt of said court. And it was prayed, among other things, in and by the said petition, that another mittimus might issue by the order of said court, directed to the sheriff of Niagara or Monroe, against the said Spalding, for and on account of the contempt aforesaid; and whereas, upon an order to show cause why said mittimus should not issue, in pursuance of the prayer of the said petition for that purpose duly made and granted by said court, and served upon said Spalding,

according to the course and practice of said court, the facts above stated and set forth were substantially admitted. And upon hearing A. Gardiner, of counsel for the above named relator, and Mr. C. L. Clark, of counsel for said Spalding, and upon due liberation had in the premises, it is ordered, adjudged, and decreed, by the court aforesaid, that the said commissioner had no jurisdiction or authority to grant the discharge aforesaid, and that said discharge is absolutely null and void. And it is further ordered, adjudged, and decreed, that the said defendant, Spalding, is, and has been, at large in the same manner as though the said sheriff had permitted him voluntarily to escape from his custody. And it is further ordered, adjudged and decreed, that a new mittimus issue out of and under the seal of this court, directed to the sheriff of the county of Niagara, directing and commanding him to commit the said Spalding to the common jail of the county last aforesaid, until he pay the said fine of three thousand dollars for the contempt by him committed, in wilfully violating the injunction and order of this court, of which contempt he was adjudged guilty, by a decree of this court, made on the 21st day of March, 1842; and also the costs and expenses as provided in the order last aforesaid, as taxed, amounting to one hundred and ninety-six dollars and fifty-one cents. And it is further ordered, adjudged, and decreed, that the said costs and expenses be paid to the solicitor of the said relator, and that the said sum of three thousand dollars be paid to the clerk of this court for the 8th circuit, to be retained by him, subject to the further order of this court.

THE PEOPLE, ex rel. Frederick F. Backus,
vs.
LYMAN A. SPALDING.

Opinion of Vice Chancellor.

THE VICE CHANCELLOR. By the 4th section of the act of Congress to establish a uniform system of bankruptcy throughout the United States, it is provided "that the discharge and certificate, when duly granted, shall in all courts of justice be deemed a full and complete discharge of all debts, contracts, and other engagements of such bankrupt, which are proveable under this act; and shall be and may be pleaded as a full and complete bar to all suits brought in any court of judicature whatever; and the same shall be conclusive evidence of itself in favor of such bankrupt, unless the same shall be impeached for some fraud or wilful concealment by him of his property or rights of property, contrary to the provisions of this act, on prior reasonable notice, specifying in writing such fraud or concealment." This act is the general law of these United States, and is equally binding upon all the courts, State as well as Federal, to regard its provisions. A discharge obtained under it is a discharge of existing debts, and if properly presented to the consideration of courts, is to be so held by them. The bankrupt may avail himself of the discharge by plea or motion, as the circumstances of the case render proper. *Eden on Bankruptcy*, 424, 426. I apprehend as to the mode of rendering the certificate available to the bankrupt, the practice adopted by

our supreme court under insolvent laws would be a proper course to adopt. As I understand this practice, to a suit commenced after the discharge, the insolvent must plead or give notice of his discharge, so that its validity may be tried; and if he neglects to do this, he will not be protected. If the cause is at issue and not tried, the discharge may be pleaded *puis darien continuanse*. If it comes after verdict, and before judgment, a perpetual stay on the *ca. sa.* will be ordered. If after judgment, he will be discharged on motion. *Baker vs Taylor*, 1 *Cow. Rep.* 165. *Baker vs. Judges of Ulster*, 4 *John's Rep.* 191. *Reed vs. Jordan*, 1 *Cow. Rep.* 50. *Palmer vs. Hutchins*, 1 *Cow. Rep.* 42. And if the application is made on motion after judgment, the court will not decide upon the regularity of the discharge upon affidavits on a motion, but will allow the discharge, and will leave the plaintiff to impeach it, in an action upon the judgment. *Russell vs. Packard*, 9 *Wend.* 431. In all these cases the motion is made to the court where the judgment is, or before which the suit is, pending. Under some acts of this character, the sheriff is required to discharge the insolvent from imprisonment, upon the production of a certificate; and when he has refused to do so, the question has been tried by habeas corpus before some proper court. *Wheldale vs. Wheldale*, 16 *Vesey*, 376.

The question here is, whether the commissioner had any authority or power to try the effect of this discharge upon a habeas corpus. The commissioner has only the power of a judge of the supreme court at chambers. The statute in relation to habeas corpus provides, that if it shall appear from the return that the party was in custody for any contempt, specially or plainly charged in the commitment by some court, officer, or body, having authority to commit for the contempt so charged, and that the time during which such party may be legally detained has not expired, the party shall be remanded. 2 *R. S.* 557, § 40; and it has been held that a commissioner has no jurisdiction to try the question upon habeas corpus, when the commitment was made by a court of superior jurisdiction; and that the court alone, before whom such commitment was adjudicated, was the proper tribunal to adjudicate upon its legality and regularity. *The People vs. Nevins*, 1 *Hill's Rep.* 165, 171. But the habeas corpus act further provides. (2 *R. S.* 568, § 41,) that if it appear on the return that the prisoner was in custody by legal process, the prisoner shall only be discharged when, among other cases, "though the original imprisonment was lawful, yet by some act, 'omission or event which has taken place afterwards, the party has 'become entitled to be discharged," and it may be supposed that the discharge under the bankrupt act was such subsequent act or event which would give the commissioner jurisdiction upon habeas corpus. But the commissioner is hardly a court of judicature within the bankrupt act, and does not appear to have any power to try the issue which may be found under that act, to test the validity of the certificate. This court is clearly the proper tribunal, and the only proper tribunal, to try all questions arising out of its own adjudication in the matter of the contempt, as seems to be established in the case, *Hill Rep.* 165; and the commissioner in undertaking to ad-

judicate and pass upon it, did so without jurisdiction. This was so viewed by the district judge of the United States court for the northern district of New York, who, in *ex parte John N. Bonesteel*, in August last, decided that application must be made to the court of chancery in a case very similar to the present. Bonesteel obtained his discharge under the bankrupt law in July, and was afterwards arrested on a *ne exeat* issuing out of the court of chancery, and imprisoned for want of bail. He petitioned the U. S. court for a discharge, on the ground that the debt upon which he was arrested accrued two years before he obtained his certificate. That court held that it was a clear case for a discharge from imprisonment, but that application must be made to the court of chancery.

For the purposes of this motion, it is, perhaps, immaterial whether the defendant was properly or improperly discharged; this application is for his recommitment, and if his certificate is a legal discharge from this imprisonment, he should not be recommitted if he is ever so improperly out of custody. That presents the important question, in this matter, whether the defendant's discharge under the bankrupt law entitles him to freedom from imprisonment on this fine. The title of the statute relative to proceedings, as for contempt to enforce civil remedies, provides that if the court adjudges the party guilty of the misconduct charged, and such misconduct impaired the rights of any party, it should impose a fine, and the fine is at any rate to be sufficient to indemnify the party injured for his actual loss or injury, which shall be paid over to the party on the order of the court. 2 *R. S.* 538, § 20–21. The party sentenced to imprisonment, upon conviction for any contempt or misconduct, is to be kept in prison, and not to be let out on bail. 2 *R. S.* 755, § 7. To the same effect is 2 *R. S.* 457, § 61, which in case of commitment upon process for contempt, except on attachment for non-payment of costs, the party is to be confined and detained within the jail. All these statute provisions seem to consider the imprisonment on a commitment for a contempt something more than an imprisonment on an execution for a debt, as he is not to be let to bail even for the limits. It is, perhaps, somewhat difficult to determine when commitments of this character lose their analogy to imprisonment upon execution in civil process, and assume the character and nature of criminal proceedings. The boundary line is not definitely marked in the judicial decisions.

It would seem that the court of chancery, in England, did not formerly permit a discharge, under the insolvent debtor's act, to interfere with any commitment for a contempt of that court; and it was provided by an act of 7 *Geo.* 4, c. 57, that the discharge shall and may extend to all process issuing from any court for a contempt of any court, ecclesiastical or civil, for non-payment of money, or of costs, or expenses in any court. 10 *Petersdorff, A. B.* 714. There is no such provision in the bankrupt act of Congress. When the commitment was for the non-payment of any sum of money or costs, it has been held to be merely an execution for the payment of a civil debt, and the bankrupt has been discharged; *ex parte Parker*, 3 *Vesey*, 554; and a person who was committed under an order of filiation and maintenance, was held discharged from imprisonment by

a discharge under our insolvent laws, as this order was only for the payment of money, *ex parte Smith*, 5 *Cowen*, 276. The freedom from arrest by the privilege of parliament is certainly as great as that given by a discharge under the bankrupt law, yet in *M. Long Willesby's case*, 2 *Russ & Myden*, 639, it was holden that privilege of parliament is no protection against an attachment for contempt, which is of a criminal and not a civil kind, as a removal of a ward of the court from the custody of the person with whom she lived with the approbation of the court. But an attachment would not be granted against a peer or member of parliament for the non-payment of a sum of money under an award, *Catmur vs. Sir E. Knatchbull*, 7 *T. R.* 448. *Walker vs. the Earl of Grosvenor*, 7 *T. R.* 171. And a certificate of bankruptcy discharges an attachment for the non payment of a sum of money, as does also a discharge under the insolvent debtor act; *Wall vs. Atkinson*, *Cooper*, 198, *Wheldale vs. Wheldale*, 16 *Vesey*, 376, *ex parte Perkins*, 3 *Desaus Che. Rep.* 549, *Lowe vs. Blake*, *Ib.* 264, cited in a note to 16 *Vesey*, 376, by the American editor. By the terms of the bankrupt act and the policy of that statute, all debts are discharged which may be proved under the commission. The right to a discharge and the power to prove a debt are co-relative.

The fine in this case was imposed by the court, for the misconduct of the defendant, in violating the process of this court by a disobedience of its injunction. He must be presumed by that act of contempt to have taken from the complainant in the suit property to which he would have entitled himself by the decree of the court, as the fine imposed must have been only commensurate to this injury. This money was ordered to be paid into court. It was not the complainant's, until he had established his right to it, by a decree in the cause, and obtained an order for the payment of the money to him. Who, then, should prove the debt, if it is one: the relator, the clerk of this court, or the people of the State of New York? It appears to me that the very statement of the case shows that it was not a debt capable of being proved as such by any one; but a fine imposed as a punishment upon the defendant for a misconduct, which our statute deems so gross that he is to be confined in close jail until it is paid, without making any provision for his discharge in the event of his inability to pay it. If it had been viewed by our laws in the light of an execution for the collection of a civil debt, they would have permitted it to be discharged and relieved from, in the same mode as other civil debts are relieved from. Our statute seems to regard all attachments, except for the non-payment of money, in the light of criminal proceedings. If the fine in this case had been distinctly imposed for the vindication of public justice, there would have been no question of the criminal nature of the proceedings; and though it is imposed for the eventual indemnity of the complainant in the suit, it seems to me that it is looked upon as not the less a punishment for the misconduct, though the court is directed to pay it over to the complainant who is injured, if he chooses to accept it. He is not even bound to accept it; but may seek more ample redress by other proceedings if he thinks he can attain

it. A discharge under the bankrupt act seems to have about the same effect as a discharge under our insolvent laws. Under this head we have some decisions in our own court, which seem to bear upon the subject. An attachment for the non-payment of costs, though in form a criminal proceeding, is held to be in effect and substance a civil proceeding to collect a debt; and a party under examination, before a legal officer, was held to be exempted from arrest on such attachment, while attending such examination. But whether the same protection would extend to those cases in which the court is authorized to punish the party by fine and imprisonment, on an attachment to enforce a civil right or remedy, was held to admit of a doubt. *Snelling vs. Watrous*, 3 *Paige*, 314.

In a later case the same result was reached, as to attachment for the non-payment of money, but the doubt as to its extending to other cases is more strongly expressed. The party in that case was imprisoned for non-payment of alimony ordered by the court, and application was made for his discharge upon his executing an assignment of all his property, and it was held that the process was an execution in a civil cause; but the chancellor adds, "the vice-chancellor is correct in supposing that the power to discharge a party under the provisions of this statute does not extend to a case of commitment for a fine imposed upon a party for a contempt of the court, or when a party is imprisoned for the non-performance of some act or duty which it is in the power of the defendant to perform." *Van Wegal vs. Van Wegal*, 3 *Paige*, 38.

In a still subsequent case the same doctrine was maintained, that when a rule or order of this court required a party to pay costs, or any other sum of money, and he is committed for non-payment of the same, he is in execution in a civil action, or on attachment, for not paying the sum directed to be paid, and may have the jail liberties and be discharged under the insolvent law, upon making an assignment of his property. But he cannot be discharged if he was committed for the non-payment of a fine imposed upon him as a punishment for a contempt of the court. Neither is he entitled to the jail liberties; and the chancellor remarked that he saw no remedy in such case for the party imprisoned, unless by a resort to the general pardoning power, if that power extends to such a case. *The People vs. Bennett*, 4 *Paige*, 282.

It thus appears that no discharge under any of our insolvent laws would relieve a party situated like this defendant; and I apprehend that a discharge under the bankrupt law would have no greater effect. It seems to be considered, that if the court order a party to pay a given amount of costs, or a specific sum of money for any purpose, and he is committed on attachment for failure to perform such order and make such payment, that such process is in the nature of an execution to enforce a civil debt, though it assumes the form of a criminal proceeding; but if a fine is imposed for any contempt of the court, whether the fine is for the benefit of the party to the suit, or to vindicate the cause of public justice, that such proceeding is not only in form, but in substance criminal, and is clothed wholly with that character. In the first case, all the court does, before issuing any process for commitment, is to be satisfied

or fully informed that the costs or sum of money have not been paid according to its order; and then a precept to commit, in the nature of an execution, issues at once. In the other case, the party is brought before the court, upon an attachment for the alleged contempt; interrogatories are proposed to him, and he files his answers thereto. There is an issue made up and tried as to the fact of the alleged contempt, which the court is to pass upon; and if it is found against the party brought up, he is adjudged guilty; and then follows the punishment for the misconduct, which is in no sense an execution for a civil debt. It is in terms and effect a punishment. The one proceeding is under one section of the statute, and the other is under a different section. And perhaps the *mode* of proceeding is the true criterion to determine whether it is in substance a civil or criminal proceeding.

After a full examination of the subject, I am compelled reluctantly, and contrary to my first impressions, to come to the conclusions that the proceedings to punish the defendant for the breach of the injunction were in substance criminal proceedings, and the fine imposed was in substance a punishment, and the process of commitment was in substance a commitment, for a criminal matter, and not an execution to collect a civil debt; and that the discharge of the defendant under the bankrupt law does not entitle him to be released from imprisonment. The defendant is at large, in the same manner as if the sheriff had permitted him voluntarily to escape; and a new mittimus for his commitment must go, according to the prayer of the relator's petition.

Dec. 12, 1842.

The defendant appealed to the chancellor from the decree of the vice chancellor, and the following is a copy of the order made by the chancellor, together with his opinion:

At a court of chancery held for the State of New York, at the city of Albany, on the second day of June, one thousand eight hundred and forty-three.

Present, Reuben H. Walworth, chancellor.

THE PEOPLE, ex rel. Frederick F. Backus.
vs.
LYMAN A. SPALDING.

This cause having been brought to a hearing on the appeal from the vice chancellor of the eighth circuit, and after hearing Mr. Gardiner for the relator, and Mr. Curtenius for the defendant, and the chancellor having duly considered the same, it is ordered that the decree or order appealed from in this cause, made by the said vice chancellor, be, and the same is hereby affirmed, with costs. And further, that the proceedings be remitted to the said vice chancellor for carrying into effect the said order or decree.

(A copy.) JOHN M. DAVISON, *Register.*

In chancery.

THE PEOPLE, ex relat. Frederick F. Backus,
vs.
LYMAN A. SPALDING.

Opinion of the Chancellor.

This was an appeal by the defendant from an order of the vice chancellor of the eighth circuit, to recommit the defendant upon a conviction, for a contempt. The defendant had been convicted for the wilful breach of an injunction, and had been fined for such misconduct, as directed by the statute. After his commitment he was discharged from his debts under the bankrupt act. A supreme court commissioner, supposing that a fine imposed upon a party for such misconduct was an ordinary debt from which the defendant could be discharged under the late bankrupt act, assumed the authority to discharge him upon habeas corpus.

J. L. CURTENIUS, *for the Appellant.*
A. GARDINER, *for the Respondent.*

THE CHANCELLOR. It is perfectly clear that the commissioner in this case had no jurisdiction to discharge the defendant. The statute declares, that where, upon the return to a writ of habeas corpus, it appears that the party is detained in custody for a contempt, plainly and specially charged in the commitment by a court having authority to commit for such contempt, and that the time during which such party may be legally detained has not expired, it shall be the duty of the officer, before whom the habeas corpus is returnable, forthwith to remand such party, (*2 R. S.* 567, § 40.) It is not necessary, in this case, to inquire whether a discharge under the bankrupt act will operate as a discharge of a commitment, as for a contempt for the non-payment of a sum of money payable under an order or decree of the court of chancery.

But in a case like the present, where the defendant is fined and imprisoned for an actual contempt, and the fine is directed to be paid into court to abide the final order of the court in relation to the same, there is no pretence that the bankrupt law was intended to relieve the defendant from the consequence of his criminal misconduct. Where the defendant in this court is ordered or decreed to pay a sum of money, it becomes a debt; and the ordinary precept to commit him for not paying it is in the nature of a *capias ad satisfaciendum*, and the defendant may be discharged from the insolvent act, upon the surrender of his property. (*Van Wezel vs. Van Wezel, 5 Paige's Rep.* 38.) But where a fine is imposed upon a defendant for a wilful contempt in violating an injunction, or any other criminal misconduct of the like nature, he can neither be discharged under the insolvent laws, or under the bankrupt act, but is in the same situation in this respect as if such fine had been imposed upon him on a conviction for an assault and battery, or for stealing. And until the act of the last session, the court itself, which had imposed the fine for the protection of the rights of the relator, could not discharge the defendant, without actual payment.

The decision of the vice chancellor was unquestionably right, and the order appealed from must be affirmed, with costs.

(A copy.) JOHN M. DAVISON, *Register.*

In the court for the correction of errors.

LYMAN A. SPALDING, appellant,
vs.
THE PEOPLE, ex rel. Frederick F. Backus, respondent.

To the court for the correction of errors:

The petition of appeal of the above named Lyman A. Spalding respectfully shows: that an order was lately made and entered in the court of chancery of the State of New York, by the chancellor, bearing date the second day of June, one thousand eight hundred and forty-three, in a certain cause pending in said court, entitled, The People of the State of New York, ex rel. Frederick F. Backus, against Lyman A. Spalding, defendant, in and by which said order it is ordered, that the decree or order appealed from in this cause, made by the vice chancellor of the eighth circuit, be and the same is hereby affirmed, with costs; and further, that the proceedings be remitted to the said vice chancellor for carrying into effect the said order or decree; which said order of the chanceller is, as the appellant is advised, erroneous and ought to be reversed; whereupon this appellant respectfully prays that the said order of the chancellor may be sent to the court for the correction of errors, and filed with the clerk thereof without delay; and that the said order, above stated and set forth, may be reversed, and that such other order may be made by the court for the correction of errors as shall be agreeable to equity and good conscience, and this appellant may be restored to all things which he has lost by said order.

And the appellant, as in duty bound, will ever pray.

Dated June 14, 1843.

JOHN L. CURTENIUS, *Sol'r, and*
J. C. COLTON, *of Coun. for Appellant.*

In the court for the correction of errors.

LYMAN A. SPALDING, appellant,
vs.
THE PEOPLE, ex rel. Frederick F. Backus, respondent.

The answer of the above respondent to the petition of appeal of the appellant.

This respondent, not confessing or acknowledging all or any of the matters or things to be true, as in and by the said petition of appeal are contained and set forth, for answer thereunto, says: that he believes it to be true that such decree or order, as is complained of by the appellant, was made by the court of chancery, as in said petition of appeal is set forth; but as to the date, substance, and contents thereof, this respondent humbly craves leave to refer thereto when the same shall be produced.

And this respondent is advised and believes that the said order is agreeable to equity and justice, and he humbly prays that the same be affirmed, and that the said petition of appeal may be dismissed by this honorable court, with costs to be adjudged to this respondent.

M. F. DELANO, *Sol. for Res.*
A. GARDINER, *of Counsel.*

In the court for the trial of impeachments, and for the correction of errors.

LYMAN A. SPALDING, appellant,
vs.
THE PEOPLE, ex rel. Frederick F. Backus, respondent.

STATE OF NEW YORK, *ss:*

I, Isaac R. Elwood, clerk of the said court for the trial of impeachments, and for the correction of errors, do hereby certify, to the Supreme Court of the United States of America, that the petition of appeal, with the return thereto, and the answer to said petition, and the decree of the court thereupon, hereto annexed, are true transcripts of their respective originals remaining in my office in the above entitled cause.

And I do further certify, that the foregoing contains a true copy of all the pleadings, papers, proofs, or other proceedings, used upon the argument of the said cause, before the aforesaid court for the trial of impeachments, and for the correction of errors.

In witness whereof, I have hereunto subscribed my name and affixed the seal of the said court, this 16th day of January, in the year of our Lord eighteen hundred and forty four.

[L. S.]

ISACC R. ELWOOD, *Clerk.*

Assignment of errors.

SUPREME COURT OF THE UNITED STATES:

LYMAN A. SPALDING,
vs.
THE PEOPLE of the State of New York, ex rel. Frederick F. Backus.

Of the term of January, in the year of our Lord eighteen hundred and forty-four.

Afterwards, to wit, on the second Monday of January, in the same term, before the Supreme Court of the United States, comes the said Lyman A. Spalding, by Henry K. Hopkinson his attorney, and says, that in the record and proceedings aforesaid, and also in giving the judgment aforesaid, there is manifest error in this, to wit, that the plea aforesaid, and the matters therein contained, are not sufficient in law to bar or preclude the said Lyman A. Spalding from having and maintaining his action aforesaid against the People of the State of New York, on the relation of Frederick F. Backus. There is also error in this, to wit, that by the record aforesaid it appears that the judgment aforesaid, in form aforesaid

given, was given for the said The People of the State of New York, on the relation of Frederick F. Backus, against the said Lyman A. Spalding, whereas, by the law of the land, the said judgment ought to have been given for the said Lyman A. Spalding against the said The People of the State of New York, on the relation of Frederick F. Backus; and the said Lyman A. Spalding prays, that the judgment aforesaid, for the errors aforesaid, and other errors in the record and proceedings aforesaid, may be reversed, annulled, and altogether held for nothing, and that he may be restored to all things which he hath lost by occasion of the said judgment.

H. K. HOPKINS.
Attorney for plaintiff in error.
(Lockport, Niagara county N. Y.)

Filed, 1844.